



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

June 11, 2018

BY EMAIL AND CM/ECF (AS REDACTED)

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *United States v. Pizarro & Rivera, S4 17 Cr. 151 (AJN)*

Dear Judge Nathan:

The Government respectfully submits this letter in response to the defendants' letter motion of May 31, 2018, in which they request what they characterize as additional "*Brady* and *Giglio* material" relating to the Government's prior disclosures. (See Def. Ltr. Mot. at Dkt. No. 146 (hereafter, the "May 31st Letter Motion")). The Government respectfully requests that it be permitted to file a version of this letter response via CM/ECF in which the bracketed information is redacted, which would be consistent with the approach taken by the defendants in the May 31st Letter Motion.

As the Court is aware, prior to the defense's filing of the May 31st Letter Motion, the Government was already conducting a comprehensive review of its hard copy, electronic, and e-mail files to ensure that all Rule 16, *Brady*, *Giglio*, and 3500 material is produced to the defense, and to provide the defense with additional materials that relate to certain topics in which they have expressed an interest. The Government also sought to identify information as to which disclosure is not mandated, and in which the defense has not expressed an interest, but which, out of an abundance of caution, we wish to produce to the defense. The materials the Government is now producing to the defense as a result of this review are discussed in an accompanying letter dated June 11, 2018 (hereafter, the "June 11th Disclosure Letter") which we respectfully request be filed under seal. The Government further responds to the defense's specific requests as set out in the May 31st Letter Motion as follows:

1. Any reports, notes, memoranda, and any other records, containing information regarding the relationship between Robert Bishun and Merlin Alston.

The Government has already provided Robert Bishun's 3500 materials to the defense. In addition, as described in the June 11th Disclosure Letter, the Government is producing today the interview notes for Gabriel Reyes, a cooperating witness who testified at the trial of Merlin Alston, although we do not intend to call Reyes as a witness at trial in this case.

2. Any reports, notes, memoranda, and any other records, containing information regarding the relationship between Robert Bishun and Gabriel Guillen

The Government has no additional information regarding any relationship between Robert Bishun and Gabriel Guillen. Out of an abundance of caution, we note for the defense that during the course of Bishun's proffers (the notes of which have previously been produced to defense counsel), Bishun stated that he knew a person who went by the name [REDACTED] and provided a physical description. Based on the nickname and physical description, the Government believes that the [REDACTED] referenced by Bishun could be [REDACTED], [REDACTED], who is believed to be a supplier of drugs to the Guillen DTO. Similarly, the Government has previously identified [REDACTED] as someone who knew Bishun, and the NADDIS reports and rap sheets for [REDACTED] and [REDACTED] show that they were arrested on the same day in the same case in September 2011. None of this information shows any connection or relationship between Bishun and Guillen, nor is the Government aware of any such connection.

3. Any reports, notes, memoranda, and any other records, containing information regarding the relationship between Gabriel Guillen and Merlin Alston

The Government has no additional information regarding any relationship between Gabriel Guillen and Merlin Alston.

4. Any reports, notes, memoranda, and any other records, containing information regarding the relationship between Robert Bishun and any individual named in Agent Mercurio's September 30, 2016 ROI

The Government has no additional information regarding any relationship between Robert Bishun and the individuals named in the September 30, 2016 DEA-6 Report.

5. Any reports, notes, memoranda, and any other records, containing information regarding the relationship between Robert Bishun and the individuals named in the Government's May 13 and May 14, 2018 disclosures

The Government is not aware of additional records containing information regarding any relationship between Robert Bishun and individuals named in the Government's May 13, 2018 and May 14, 2018 disclosures, beyond the information previously provided to the defense or discussed in the June 11th Disclosure Letter.

6. Any reports, notes, handwritten notes, memoranda, and any other records, including but not limited to DEA6 reports, and 302s relating to [REDACTED]

[REDACTED]

]

7. Provide unredacted copies of the [REDACTED] proffer notes

As noted with respect to Request # 6, the Government has already provided the information contained in [REDACTED]'s proffer notes relating to the Bishun homicide. Nonetheless, if defense counsel wish to physically inspect the remainder of his proffer notes in an unredacted form, they may do so on an Attorney's Eyes Only basis at the United States Attorney's Office.

8. Provide reports, notes, memoranda, handwritten notes of in-person, telephonic, and video meetings with [REDACTED]

[REDACTED] has no known association with any of the individuals named in the Government's prior correspondence beyond the fact that [REDACTED]

[REDACTED] As to that topic, a single proffer took place on April 3, 2018. If defense counsel wish to inspect the proffer notes from that proffer in an unredacted form, they may do so on an Attorney's Eyes Only basis at the United States Attorney's Office.

9. Provide any and all information the Government relied on in making the factual representations surrounding Guillen's statements to CI-1 and CW-1 contained in its May 4, 2018 letter

The Government has already provided this information to the defense.

10. Provide copies of all handwritten notes containing information included in the Government's May 4, 2018 letter

The Government has already provided this information to the defense.

11. Provide any and all information the Government relied on in making the factual representations in its May 13, 2018 letter

The Government has already provided this information to the defense.

12. Provide whether there are any other cooperating witnesses against Guillen

[REDACTED] The Government does not intend to call as a witness the confidential informant who worked proactively with the DEA during the investigation of Guillen's drug trafficking organization—the "CI-1" described in the Government's December 11, 2017, January 25, 2018, and February 11, 2018 letters, who as was discussed in the Government's May 4, 2018 letter, has been charged with and pled guilty to obstruction of justice. [REDACTED]

13. With regard to the linesheets disclosed on May 4, 2018, please provide the names associated with the target of the Government intercept, including the name of the target

The Government provided this information to the defense on May 6, 2018.

14. With regard to the linesheets disclosed on May 4, 2018, please provide whether the Government has any information that the target of the intercept was connected to Robert Bishun, Merlin Alston, Gabriel Guillen, or any other individual named in the Government's alternative perpetrator disclosures

The Government is unaware of any such information.

15. With regard to the linesheets disclosed on May 4, 2018 please provide the steps the Government took, if any, to learn the identity of the unknown individual intercepted on the call

As discussed in the June 11th Disclosure Letter, the Government is producing today the phone records obtained for the phone numbers associated with the phone calls.

16. Please provide the NADDIS files and RAP sheets for the following individuals: Robert Bishun, Gabriel Guillen, Merlin Alston, and every individual named in the Government's May 2018 disclosures

The Government previously produced many of these rap sheets to the defense on May 8th [REDACTED], May 13th [REDACTED], and May 15th [REDACTED] on an Attorney's Eyes Only basis.

The Government is producing today the rap sheets for [REDACTED]

[REDACTED], as well as any NADDIS reports that exist for all of these individuals, on an Attorney's Eyes Only basis. The Government notes that no NADDIS report could be identified for [REDACTED], and no rap sheet could be identified for [REDACTED], as we advised the defense on May 13, 2018.

17. Please provide the NYPD internal affairs file for Merlin Alston

To the extent defense counsel wish to inspect the IAB file relating to the investigation of Merlin Alston's drug activity, they may do so on an Attorney's Eyes Only basis at the United States Attorney's Office.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

By: _____ /s/ _____
Jessica Fender
Jared Lenow
Jason Swergold
Assistant United States Attorneys
Southern District of New York
Tel: (212) 637-2276 / 1068 / 1023

cc: All counsel of record